



EVERSHEDS

Dated

2014

- (1) POWYS COUNTY COUNCIL
- (2) STITCHING ADMINISTRATIEKANTOOR WINDJAMMER
- (3) EDWARD PHILLIP JONES AND SUSAN JONES
- (4) RICHARD ELLIS JONES
- (5) ALED EMLYN EVANS AND RHODRI GLYN EVANS
- (6) PATRICIA ANNE LEWIS, RHIAN WYNN LEWIS AND ELIN MAI LEWIS
- (7) HSBC BANK PLC
- (8) RWE INNOGY UK LIMITED
- (9) CARNEDD WEN WIND FARM LIMITED

Agreement

under section 106 Town and Country Planning Act 1990 relating to Carnedd Wen Wind Farm and Habitat Restoration Project, Montgomeryshire, Powys

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6 May 2014 ~~16 April 2014~~ muttonk

CONTENTS

Clause		Page
1	INTERPRETATION	3
2	EFFECT OF THIS AGREEMENT	5
3	COMMENCEMENT DATE	6
4	OBLIGATIONS OF THE PARTIES	6
5	TERMINATION OF THIS AGREEMENT	7
6	LENDER'S CONSENT	8
7	NOTICES	8
8	COSTS OF THIS AGREEMENT	9
9	DETERMINATION OF DISPUTES	9
10	JURISDICTION	10
11	EXECUTION	11
12	COUNTERPARTS	11
Schedules		
1	Television Reception	12
2	Financial Security For and Management of the HRMP	16
3	Financial Security for Decommissioning	22
4	Environmental Plans	24
5	Plans attached at Appendix 1	25 26

THIS AGREEMENT is made on

2014

BETWEEN:

- (1) **POWYS COUNTY COUNCIL** of County Hall, Llandrindod Wells, Powys LD1 5LG ("**the Council**");
- (2) **STICHTING ADMINISTRATIEKANTOOR WINDJAMMER** (a company registered in Holland) whose registered office is at Herengracht, 4771017BS Amsterdam ("**the First Owner**");
- (3) **EDWARD PHILLIP JONES AND SUSAN JONES** of Clegyrnant Pandy, Llanbrynmair, Powys SY19 7EA ("**the Second Owner**");
- (4) **RICHARD ELLIS JONES** of Maes-llymystyn, Foel, Welshpool, Powys SY21 0NX ("**the Third Owner**");
- (5) **ALED EMLYN EVANS AND RHODRI GLYN EVANS** of Dol-y-Maen Foel, Welshpool, Powys SY21 CWY ("**the Fourth Owner**");
- (6) **PATRICIA ANNE LEWIS, RHIAN WYNN LEWIS AND ELIN MAI LEWIS** of 6 Tregarth, Machynlleth, Powys SY20 8HT ("**the Fifth Owner**");
- (7) **HSBC BANK PLC** (registered company number 00014259) whose registered office is at 8 Canada Square, London E14 5HQ ("**the Lender**");
- (8) **RWE INNOGY UK LIMITED** (registered company number 02550622) whose registered office is at Auckland House, Lydiard Fields, Great Western Way, Swindon, Wiltshire SN5 8ZT ("**the First Developer**"); and
- (9) **CARNEDD WEN WIND FARM LIMITED** (registered company number 05712858) whose registered office is at Auckland House, Lydiard Field, Great Western Way, Swindon, Wiltshire SN5 8ZT ("**the Second Developer**").

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The First Owner is the freehold owner of those parts of the Site which are registered under title numbers WA681212, CYM51016, WA538121, WA952955, CYM42011, WA519385, WA472483, WA881410, WA910463, WA729551 free

from encumbrances that would prevent the First Owner entering into this Agreement.

- (C) The Second Owner is the freehold owner of that part of the Site which is registered under title number WA783990 free from encumbrances that would prevent the Second Owner entering into this Agreement.
- (D) The Third Owner is the freehold owner of that part of the Site which is registered under title number CYM25466 and CYM46822 subject only to the First Security and otherwise free from encumbrances that would prevent the Third Owner entering into this Agreement.
- (E) The Fourth Owner is the freehold owner of that part of the Site which is unregistered with the root of title being the conveyance dated 28 January 1977 made between Fitzhugh, Lowther and Lee (1) and Evans (2) subject only to the Second Security but otherwise free from encumbrances that would prevent the Fourth Owner entering into this Agreement.
- (F) The Fifth Owner is the freehold owner of that part of the Site which is registered under title number CYM340987 free from encumbrances that would prevent the Fifth Owner entering into this Agreement.
- (G) The First Developer has entered into agreements with the Fourth Owner and the Fifth Owner to acquire leasehold interests in their parts of the Site. The Second Developer has entered into agreements with the First Owner, the Second Owner and the Third Owner to acquire leasehold interests in their parts of the Site.
- (H) The First Developer submitted the Application to the Secretary of State for Energy and Climate Change for the Section 36 Consent and the Planning Permission.
- (I) The Council objected to the Application and a public inquiry has been called under the provisions of Schedule 8 of the 1989 Act.
- (J) The parties have agreed to enter into this Agreement with the intention that the obligations contained herein are planning obligations for the purposes of the 1990 Act which may be enforced by the Council against the Owners the Developers and the Lender as provided for in this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

"1989 Act"	the Electricity Act 1989
"1990 Act"	the Town and Country Planning Act 1990
"Application"	an application made by the First Developer on 11 December 2008 under section 36 of the 1989 Act for consent to construct and operate a power station and for a direction under section 90(2) of the 1990 Act that planning permission be deemed granted for the Development
"Commencement Date"	the date on which this Agreement comes into force as defined in clause 3.1.
"Commencement of Development"	the date on which Development commences by the carrying out under the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act
"Developers"	the First Developer and the Second Developer
"Development"	the development of the Site for the HRMP and for the construction and operation of up to 50 wind turbines with a maximum blade tip height of 137 metres, foundations and crane pads for each turbine, two anemometry masts with a maximum height of 90 metres, one substation, a control building, 6 borrow pits, a mobile concrete batching plant, underground cables, access tracks and upgraded existing forestry tracks and ancillary works on land at Carnedd Wen Powys

"First Security"	a legal charge of that part of the Site owned by the Third Owner dated 4 May 2001 and made between (1) the Third Owner and (2) the Lender
"HRMP"	as defined in Schedule 2
"Owners"	together the First Owner, the Second Owner, the Third Owner, the Fourth Owner and the Fifth Owner
"Planning Permission"	the planning permission that may be deemed granted in pursuance of the Application by the Secretary of State under section 90(2) of the 1990 Act
"Second Security"	a legal charge of that part of the Site owned by the Third Owner dated 22 July 2011 and made between (1) the Third Owner and (2) the Lender
"Section 36 Consent"	the consent for the construction and operation of a generating station on the Site which may be granted by the Secretary of State under section 36 of the 1989 Act
"Site"	the freehold property at Carnedd Wen, Powys which is shown for the purpose of identification only edged red on Figure 1.2 of the SEI 2013 Revised scheme layout for proposed Carnedd Wen wind farm and habitat restoration project as attached
"Specialist"	has the meaning given to it in clause 9.2

1.2 In this Agreement:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a

Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Agreement include their successors in title and references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Owners, the Developers or the Lender not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. **EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of section 106 of the 1990 Act,

the obligations contained herein are planning obligations for the purposes of the 1990 Act and are enforceable by the Council.

- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Agreement will be registered as a local land charge by the Council.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission or development consent, save for the Section 36 Consent and the Planning Permission .

3. **COMMENCEMENT DATE**

- 3.1 With the exception of clauses 8.1, 10, 11 and 12 which shall come into effect immediately upon completion of this Agreement the provisions of this Agreement shall take effect upon the grant of Planning Permission.

4. **OBLIGATIONS OF THE PARTIES**

- 4.1 The Owners and Developers agree with the Council to comply with the obligations set out in **Schedules 1 to 4**.
- 4.2 The Owners consent to the Developers entering into this Agreement and the Developers acknowledge that the Site will be bound by the obligations set out in **Schedules 1 to 4** upon the acquisition of leasehold interests in the Site
- 4.3 The Developers hereby covenant with the Owners to observe and perform the covenants on the Developers' part in this Agreement upon acquisition of leasehold interest in the Site and to indemnify the Owners against any losses costs expenses liability claims proceedings or demands (except as such arise from the negligence or default or wrongful act of the Owners or any servants or agents of the Owners)

arising from any breach or non-performance or non-observance of the covenants by the Developers.

- 4.4 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.4**.

5. **TERMINATION OF THIS AGREEMENT**

5.1 This Agreement will come to an end if:

5.1.1 The Application is refused by the Secretary of State; or

5.1.2 in positively determining the Application the Secretary of State expressly states in his decision letter that the Agreement:

5.1.2.1 is not a material planning consideration; or

5.1.2.2 that no weight can be attached to this Agreement in determining the Application;

5.1.3 Section 36 Consent and Planning Permission are quashed, revoked or otherwise withdrawn at any time;

5.1.4 the Section 36 Consent and the Planning Permission expire before the Commencement of Development.

5.2 Where the Agreement comes to an end under **clause 5.1**:

5.2.1 the Council is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site; and

5.2.2 any monies paid under this Agreement to the Council with the exception of fees paid under **clause 8** that remain unexpended or uncommitted by the Council, are to be returned to the party that made the payment within one month of the Agreement coming to an end together with interest accrued on the monies from and including the date of payment to and including the date of repayment at the rate of

interest payable by the Council's bankers at the relevant time and any bonds entered into by the Owners and the Developers at that date shall be discharged.

6. **LENDER'S CONSENT**

- 6.1 The Lender consents to this Agreement being entered into with the intention that (notwithstanding section 104 of the Law of Property Act 1925) its interests in the Site will be bound by the terms of this Agreement as if it had been executed and registered as a local land charge before the execution of the First Security or the Second Security.
- 6.2 Notwithstanding **clause 6.1**, the Lender will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under the First Security or the Second Security.

7. **NOTICES**

- 7.1 Any notice demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 7.2 Any notice demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
- 7.3 Unless the time of actual receipt is proved, a notice demand or communication sent by the following means is to be treated as having been served:
- 7.3.1 if delivered by hand, at the time of delivery;
- 7.3.2 if sent by post, on the second working day after posting; or
- 7.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 7.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules

must be complied with in respect of the service of documents in connections with those proceedings.

8. COSTS OF THIS AGREEMENT

8.1 Upon completion of this Agreement the Developers shall pay to the Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

9. DETERMINATION OF DISPUTES

9.1 Subject to **clause 9.7**, if any dispute arises relating to or arising out of the terms of this Agreement either party may give to the other written notice requiring the dispute to be determined under this **clause 9**. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

9.2 For the purposes of this **clause 9** a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to the matters in dispute.

9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power (with the right to take such further advice as he may require) to determine the appropriate type of Specialist.

9.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power with the right to take such further advice as he may require to determine and nominate the appropriate Specialist.

9.5 The Specialist is to act as an independent expert and:

9.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;

9.5.2 each party is to have a further ten working days from the date of notification of the written representations to make written comments

on the other's representations and will copy the written comments to the other party;

9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

9.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

9.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision which is to be in writing and is to give reasons for his decision; and

9.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment unless otherwise agreed in writing by each party and the Specialist.

9.7 The Specialist's determination will (save in the event of manifest error) be final and binding.

9.8 Responsibility for the costs of referring a dispute to a Specialist under this **clause 9** including costs connected with the appointment of the Specialist and the Specialist's own costs but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

9.9 This **clause 9** does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

10. JURISDICTION

10.1 This Agreement is governed by and shall be interpreted in accordance with the law of England and Wales.

10.2 Except where set out elsewhere in this Agreement the courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

11. **EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

12. **COUNTERPARTS**

This Agreement may be executed in original and any number of counterparts but it is agreed that if it is executed in counterparts then the Developers will use reasonable endeavours to procure the execution and delivery to the Council of a single copy of the Agreement executed by all the parties within 56 days after the date of completion of the Agreement.

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SCHEDULE 1~~1~~

Television Reception

1. DEFINED TERMS

1.1 In this Schedule the following words and expressions have the following meanings:

"Approved Body" a body approved by the Council to undertake any one or more of the following:

- the Baseline Survey;
- the Operational Survey;
- the investigation of any Claims

"Assessment Period" the period commencing on the First Export Date of the fifteenth wind turbine to be constructed and expiring on the date which is 12 months from the First Export Date of the final wind turbine to be constructed

"Baseline Survey" the survey of the quality of television reception in the Shadow Area to be undertaken in accordance with the provisions of Schedule 1 below and the Levels specified in the Methodology for the Subjective Assessment of the Quality of Television Pictures dated 2012 to identify the quality of television reception within the Shadow Area prior to the operation of the Development

"Claim" a claim in writing made to the Developers or the Council or the Owners that the Claimant is suffering impairment of television reception which may be directly attributable to the Development

"Claimant"	an owner or an occupier of a property existing and occupied at the date of the grant of the Section 36 Consent and Planning Permission within the Shadow Area and holding a current and valid television licence at that date
"First Export Date"	the date upon which electricity is first supplied from a wind turbine to the electricity distribution network
"Level"	a levels from 1-5 on the ITU-R quality and impairment scale set by the Radiocommunication Sector of the International Telecommunication Union as specified in the Methodology for the Subjective Assessment of the Quality of Television Pictures dated 2012
"Operational Survey"	the survey of the quality of television reception within the Shadow Area undertaken in accordance with the provisions of Schedule 1 to identify whether the quality of television reception within the Shadow Area has been materially adversely and directly affected by the operation of the Development
"Shadow Area"	an area where the quality of television reception may be affected by the operation of the Development as identified in accordance with paragraph 3.1 of this Schedule

2. **Approved Body**

- 2.1 Prior to the Commencement of Development the Owners or the Developers shall submit and secure the written approval of the Council for a list of proposed independent consultants who may be appointed by the Owners or the Developers as an Approved Body.
- 2.2 Any study to be carried out by an Approved Body shall be undertaken in accordance with best practice recommended by the Confederation of Aerial Industries from time to time.

3. Reception Assessment

- 3.1 The Owners or the Developers shall not cause or permit the First Export Date from the first turbine to occur until the Approved Body has undertaken a study to identify the Shadow Area and submitted a report of the study to Owners, the Developers and the Council.
- 3.2 The Owners or the Developers shall not cause or permit the First Export Date from the first turbine to occur until an Approved Body has undertaken and completed the Baseline Survey and submitted the same to the Council.
- 3.3 A copy of any Claim made to the Owners or Developers shall be provided to the Council within seven days of receipt of notice of such Claim.
- 3.4 Within 28 days of receipt of a Claim made to the Owners or Developers or receipt of notice of a Claim made through the Council the Owners or Developers shall procure the investigation of the Claim by an Approved Body to determine if the quality of television reception at the Claimant's property has been materially adversely affected by the operation of the Development PROVIDED THAT an Approved Body need not be appointed if the Owners or Developers in their absolute discretion accept the Claim.
- 3.5 In the event that an Approved Body is required to be appointed to investigate the Claim the Owners or Developers shall procure the completion of such investigation by that Approved Body within 28 days of appointment and shall provide a copy of the opinion of the Approved Body to the Claimant and the Council within ten days of its completion.
- 3.6 In the event that either:
- (a) the Owners or the Developers have accepted the Claim; or
 - (b) the Approved Body has determined that there is an adverse effect on television reception at the Claimant's property which is attributable to the Development such that the quality of television reception is has dropped to Level 3 or below, or if starting at Level 3 or below (as recorded in the Baseline Survey) has dropped down to the next Level.

then the Owners or Developers shall identify the necessary remedial works required to restore the quality of television reception to the Level recorded in the Baseline Survey and notify the same to the Claimant in writing.

The identified remedial works shall be procured by the Owners or Developers at their own expense and shall be completed as soon as reasonably practicable subject to the Claimant giving written consent to the Owners or Developers to undertake the identified remedial works.

PROVIDED ALWAYS THAT the Owners or Developers shall not be under any obligation to do or refrain from doing any action including (without limitation) the carrying out of works the cost of which (inclusive of any Value Added Tax or other applicable taxation) shall cause the aggregate cost of performance of its obligations pursuant to this **paragraph 3** of **Schedule 1** to exceed £20,000 (twenty thousand pounds) in total.

4. In the event that a material and adverse effect on television reception identified by the Approved Body as attributable to the Development cannot be remedied for reasons relating to the non-cooperation on the part of the Claimant or any other member of the public or due to circumstances otherwise beyond the control of the Owners or Developers the Owners or Developers shall promptly inform the Council in writing of their inability to comply. In the event that the Claimant does not give written consent to the Owners or Developers to carry out the identified remedial measures then the Owners or Developers shall use reasonable endeavours to achieve such co-operation for a period of twelve months from the date of the report of the Approved Body following investigation, following which time subject to the Owners or Developers having used such reasonable endeavours the Owners or Developers will have no liability to remedy such impairment in such circumstances.

SCHEDULE 2

Financial Security For and Management of the HRMP

1. DEFINED TERMS

1.1 In this Schedule the following words and expressions have the following meanings:

"Construction Period" the period between the Commencement of Development and the First Export Date

"Ecological Steering Group" or "ESG" the group to be established following the grant of the Section 36 Consent who will take responsibility for decision making and funding allocations in the implementation of the HRMP

"Financial Security" an instrument or trust to secure the payment of the financial obligations contained in this Agreement which is approved by the Council and which may require the deposit of cash or which may take the form of a bond, establishment of a trust or other form of security

"First Export Date" as defined in Schedule 1

"HRMP" the detailed habitat restoration and management scheme to be submitted to and approved by the Council under this Schedule based on the outline referred to at paragraph 4 of Schedule 5 and attached at Appendix 1

"HRMP Sum" the sum of not less than two million three hundred thousand (£2.3 million) Index Linked which is sufficient to cover the cost of implementing the HRMP.

"Independent Party" a suitably qualified and experienced independent third-party acting in accordance with professional standards relevant to their appointment selected by the Developers and

	approved by the Council
"Index"	the Retail Prices Index (all items) as published by the Office for National Statistics or in the event that such index or body ceases to exist then the successor to that index as published by a recognised government body
"Index Linked"	the increasing of a sum by the same percentage increase in the Index after the last published Index figure before the date of payment is compared with the last published Index figure before the date of this Agreement
"Member"	a member of the Ecological Steering Group
"NRW"	Natural Resources Wales
"Stage 1"	the period from the Commencement of Development until all wind turbines have been removed from the Site
"Stage 2"	the period from the date the final turbine is removed from the Site until the date fifty years from the Commencement of Development unless an earlier termination date is agreed in writing between the Ecological Steering Group and the Council

2. **The Ecological Steering Group**

- 2.1 The Ecological Steering Group shall be established from representatives of the Developer/Owner, NRW and the Council and shall hold it's first meeting prior to the Commencement of Development and shall provide that:
- 2.1.1 each of the bodies appointed to membership of the ESG:
- 2.1.1.1 shall nominate its appointee to membership of the ESG by notice in writing to the Developers;
- 2.1.1.2 may change its nominee Member at any time by giving 28 days written notice to the Developers; and

- 2.1.1.3 may nominate another employee of their organisation to act as a deputy to attend any meeting of the ESG;
 - 2.1.1.4 shall make its first nomination within 28 days of receiving a written notice from the Developers under this clause, failing which those who have been nominated will comprise the ESG.
- 2.1.2 Unless the Members agree it is not necessary to so meet, meetings of the ESG shall be held:
- 2.1.2.1 not less than every three months during the Construction Period;
 - 2.1.2.2 not less than once every 6 months during the 3 years following the end of the Construction Period; and
 - 2.1.2.3 thereafter at least once in each calendar year;
- 2.1.3 Meetings of the ESG shall:
- 2.1.3.1 require the attendance of 3 Members to be quorate, of which 1 Member shall be the Developers' representative;
 - 2.1.3.2 be chaired by one of the current nominees of the Developers;
 - 2.1.3.3 require decisions to be made by a simple majority through a show of hands. In the event of a tied vote, the chairperson shall have a casting vote. Where only 3 Members attend, decisions shall be unanimous. Any dispute within the ESG shall be resolved using the procedure at **clause 9** of this Agreement;
 - 2.1.3.4 be held in a location to be agreed by the ESG;
 - 2.1.3.5 be notified by at least 28 days (7 days during the Construction Period) written notice unless otherwise agreed;
 - 2.1.3.6 be notified by the Developers;
 - 2.1.3.7 be notified by the Developers on the written request of any Member during the Construction Period;
 - 2.1.3.8 be recorded by the Developers through the keeping of minutes which shall be:

- (a) circulated to Members for approval not later than 14 days after a meeting with any proposed amendments to be notified to the Developers within a further 14 days for approval at the next meeting;
 - (b) sent promptly after approval to all Members;
- 2.1.3.9 be funded by the Developers through the reasonable reimbursement of Members' direct expenses from the HRMP Sum;
- 2.1.4 the ESG shall continue through the Construction Period and for the operation of the Development unless the Members agree that its purposes as set out in the Habitat Restoration and Management Plan have been achieved;
- 2.1.5 where the ESG deems it necessary, the ESG shall produce reports which:
- 2.1.5.1 shall be published annually, not later than June in each year; and
 - 2.1.5.2 shall be made available to Members of the ESG and, at cost, any other person on request;
- 2.1.6 any of the HRMP Sum which remains at the time the ESG is terminated shall be repaid to the Developers;
- 2.1.7 any interest accruing to the HRMP Sum shall be added to the HRMP Sum;
- 2.1.8 the HRMP Sum shall be used for the following purposes:
- 2.1.8.1 the reasonable direct expenses of the Members;
 - 2.1.8.2 the reasonable fees and expenses incurred by the ESG;
 - 2.1.8.3 the costs of carrying out the HRMP; and
 - 2.1.8.4 the costs of any reports published under paragraph 2.1.5 above;
- or any other purpose approved by the ESG.
- 2.1.9 For the avoidance of doubt, none of the parties to this Agreement shall be under any obligation to provide funds towards the work of the ESG beyond that provided by the HRMP Sum.

3. **The HRMP Sum**

- 3.1 Prior to the Commencement of Development the Owners or Developers shall seek written approval of the form of Financial Security for the HRMP Sum from the Council.
- 3.2 The Owners and the Developers shall not Commence the Development unless it has first obtained and delivered the Financial Security for the HRMP Sum to the Council in the form previously approved by the Council.
- 3.3 Prior to the Commencement of Development the Owners or Developers shall seek the approval of the HRMP from the Council in writing.
- 3.4 The Owners or Developers shall implement the approved HRMP from the Commencement of Development until Stage 1 is completed.
- 3.5 Upon completion of Stage 1 the Owners or Developers shall procure such Financial Security as is required in the opinion of the Ecological Steering Group to facilitate the continuing management of the HRMP by the Ecological Steering Group during Stage 2 and shall deliver this Financial Security to the Council .
- 3.6 All obligations on the Developers under this Schedule shall cease upon receipt of the Financial Security by the Council.
- 3.7 The Owners or Developers undertake to procure a review of the Financial Security for the HRMP Sum by an Independent Party upon the 5th, 10th, 15th and 20th anniversary of the Commencement Date, and if the cost of the HRMP (as amended if appropriate) as estimated by the Independent Party at the time of the review exceeds the amount of the HRMP Sum which has been secured they shall as soon within three months of a written request from the Council provide new or amended Financial Security to cover the revised HRMP Sum.
- 3.8 In the event that the Owners or Developers fail to implement the HRMP in accordance with this Agreement during Stage 1 the following provisions shall apply:
 - 3.8.1 the Council shall be entitled to serve written notice on the Owners or Developers which shall:
 - 3.8.2 describe the nature of the breach; and
 - 3.8.3 describe the steps required by the Council to be taken to remedy such breach to comply with the requirements of the HRMP and the timescale within which they shall be completed which shall take account of the nature of the steps required to be taken;

- 3.8.4 where a notice is served on the Owners or Developers pursuant to **paragraph 3.8.1** and the Owners or Developers fail to comply therewith the Owners or Developers agree that the Council may on giving not less than 28 days written notice to the Owners or Developers enter onto the relevant parts of the Site or to take such other action as may be necessary to carry out steps to comply with the written notice and remedy the breach and any reasonable costs incurred by the Council may be recovered from the Financial Security for the HRMP Sum.
- 3.9 Upon completion to the satisfaction of the Council of all or any part of the works for Stage 1 required pursuant to the HRMP the Owners and Developers may discharge or as appropriate reduce the level of the Financial Security for the HRMP Sum by such amount as is agreed between the Council and the Owners or Developers. For the avoidance of doubt, any request for reduction of the Financial Security for the HRMP Sum shall be accompanied by an estimate from an Independent Party of the costs of performing the remainder of the HRMP.
- 3.10 During Stage 2 if the Ecological Steering Group fails to implement the HRMP as agreed the Council shall upon reasonable prior written notice to the Owners be entitled to enter onto the relevant parts of the Site or to take such other action as may be necessary to carry out steps to comply with the requirements of the HRMP and to remedy the breach and any reasonable costs incurred by the Council in doing so may be recovered from the HRMP Sum.
- 3.11 Upon completion of all or any part of the works for Stage 2 required pursuant to the HRMP to the satisfaction of the Council the Developers (where relevant) the Ecological Steering Group and the Owners may discharge or as appropriate reduce the level of the Financial Security for the HRMP Sum by such amount as is agreed between the Council, the Ecological Steering Committee and the Owners or Developers. For the avoidance of doubt, any request for reduction of the Financial Security for the HRMP Sum shall be accompanied by an estimate from an Independent Party of the costs of performing the remainder of the HRMP.
- 3.12 In the event of any dispute between the Owners or the Developers and the Council regarding the appropriateness of the review, discharge or reduction in the Financial Security it shall be determined in accordance with the procedure set out at **clause 9** of this Agreement.

SCHEDULE 33

Financial Security for Decommissioning

DEFINED TERMS

1. In this Schedule the following words and expressions have the following meanings:

"Decommissioning Sum"	the sum of £7,000 (seven thousand pounds) per MW of proposed installed capacity
"Financial Security"	defined in Schedule 2
"Independent Party"	defined in Schedule 2

2. No Development shall commence before the Developer and/or Owners have procured the carrying out of a decommissioning study by an Independent Party to confirm the Decommissioning Sum.

3. Where the decommissioning study calculates an amount required for decommissioning which is higher than £7,000 per megawatt of installed capacity then the Decommissioning Sum shall be increased to the recommended amount.

4. Prior to the Commencement of Development the Owners or Developers shall seek approval of the form of the Financial Security for the Decommissioning Sum from the Council in writing.

5. Prior to the Commencement of Development the Owners and Developers shall first obtain and deliver to the Council the Financial Security for the Decommissioning Sum in the form previously approved by the Council in writing.

6. In the event that the Owners or Developers fail to decommission the Development and restore the Site in accordance with the terms of the Planning Permission the following provisions shall apply:
 - 6.1 the Council shall be entitled to serve written notice on the Owners or Developers which shall:
 - 6.1.1 describe the nature of the breach; and
 - 6.1.2 describe the steps required by the Council to be taken to remedy such breach and the timescale within which they must be taken which shall take account of the nature of the steps required to be taken.

- 6.2 where a notice is served on the Owners or Developers pursuant to **paragraph 6.1** and the Owners or Developers fail to carry out the steps required within the timescales specified by the Council the Owners or Developers agree that they will permit the Council on giving not less than 28 days written notice to enter onto the relevant parts of the Site or to take such other actions that may be necessary to ensure compliance with the written notice;
- 6.3 any reasonable costs incurred by the Council in securing compliance with the written notice may be recovered by the Council from the Financial Security for the Decommissioning Sum;
7. Upon completion of all or any part of the works required to decommission the Development pursuant to the Planning Permission to the reasonable satisfaction of the Council the Owners or Developers may discharge or as appropriate reduce the level of the Financial Security for the Decommissioning Sum by such amount as is agreed between the Owners Developers and the Council. For the avoidance of doubt, any request for reduction of the Financial Security for the Decommissioning Sum shall be accompanied by an estimate from an Independent Party of the costs of performing the remainder of the HRMP;
8. In the event of any dispute between the Owners or Developers and the Council regarding the appropriateness of discharge or reduction in the level of the Financial Security for the Decommissioning Sum it shall be determined in accordance with the procedure set out at **clause 9** of this Agreement.

SCHEDULE 4

Environmental Plans

1. Plans

1.1 Prior to the Commencement of Development the Developers shall submit the following plans (the "Plans") to the Council for its written approval in consultation with NRW:

1.1.1 Construction Environmental Management Plan

1.1.2 Drainage Management Plan

1.1.3 Forestry Management Plan

1.1.4 Habitat Restoration and Management Plan including for the avoidance of doubt) a Micro-Siting Protocol to Minimise Peat Impacts and

1.1.5 Peat Management Plan

1.2 The plans listed at 1.1.1, 1.1.2, 1.1.3 and 1.1.5 may be revised from time to time by the Developers with the prior approval of the Council.

1.3 The plan listed at 1.1.4 may be revised from time to time by the Ecological Steering Group.

1.4 The Plans shall follow the principles set out in the corresponding plans attached at Appendix 1 unless otherwise agreed between the Developers and the Council.

Comment [E1]: Ornithological Protection is moved to the HRMP

Comment [E2]: Drain Blocking provisions are not required. This is one part of a suite of sophisticated and wide-ranging measures that are all interdependent. SEI 2013 Vol 4 Drainage Management Plan deals specifically with drain blocking (though the plan covers many other things as well). Fig DMP4 provides examples of the drain blocking techniques and plate 2 shows the decision tree.

SCHEDULE 55

Plans attached at Appendix 1

1. Draft Construction and Environmental Management Plan in relation to each phase of the development
2. Draft Drainage Management Plan
3. Forestry Management Plan
4. Outline Habitat Restoration Management Plan (including for the avoidance of doubt) the Micro-Siting Protocol to Minimise Peat Impacts
5. Draft Peat Management Plan

DRAFT

EXECUTED as a deed when the seal of)
POWYS COUNTY COUNCIL was affixed in)
the presence of:)

[Member of the council - Specify]

[Clerk or alternate - Specify]

EXECUTED as a deed on behalf of)
STITCHING ADMINISTRATIEKANTOOR)
WINDJAMMER)
a company incorporated in Holland by)
[])
being a person who in accordance)
with the laws of that territory)
is acting under authority of the Company)

EXECUTED as a deed by)
EDWARD PHILLIP JONES AND)
SUSAN JONES)
in the presence of:)

Witness signature:

Name:

Address:

Occupation:

EXECUTED as a deed by)
RICHARD ELLIS JONES)
in the presence of:)

Witness signature:

Name:

Address:

Occupation:

EXECUTED as a deed by)
ALED EMLYN EVANS AND)
RHODRI GLYN EVANS)
in the presence of:)

Witness signature:

Name:

Address:

Occupation:

EXECUTED as a deed by)
PATRICIA ANNE LEWIS,)
RHIAN WYNN LEWIS AND)
ELIN MAI LEWIS)
in the presence of:)

Witness signature:

Name:

Address:

Occupation:

EXECUTED as a deed by)
HSBC BANK PLC)
in the presence of:)

Director

Director / Secretary

EXECUTED as a deed by)
RWE INNOGY UK LIMITED)
in the presence of:)

Director

Director/

EXECUTED as a deed by)
CARNEDD WEN WIND FARM LIMITED)
in the presence of:)

Director

Director/

DRAFT

